

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)		
FOR REVIEW BY:)	CHARGE NO.:	2009CF0867
)	EEOC NO.:	21BA83209
CHESTER BERG)	ALS NO.:	09-0546
)		
Petitioner.)		

ORDER

This matter coming before the Commission by a panel of three, Commissioners David Chang, Marylee V. Freeman and Charles E. Box presiding, upon Chester Berg's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")¹ of Charge No. 2009CF0867; and the Commission having reviewed *de novo* the Respondent's investigation file, including the Investigation Report and the Petitioner's Request, and the Respondent's response to the Petitioner's Request; and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Department's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following findings of fact and reasons:

1. On September 24, 2008, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged his former employer Prince Industries, Inc. ("Employer") discharged him because of his national origin, Poland, in violation of Section 2-102(A) of the Illinois Human Rights Act (the "Act"). On August 24, 2009, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On September 28, 2009, the Petitioner timely filed his Request.
2. The Employer, via its Director of Operations (national origin: Polish), hired the Petitioner on June 16, 2008. The Petitioner worked in the Employer's Second Assembly Department.
3. In 2008, the Employer had in place a Reduction in Workforce Policy (the "Reduction Policy"). The Reduction Policy provided that if the Employer reduced its workforce, when determining which employees to retain, the Employer could take into consideration ... "the quality of each employee's past performance, the need for the position held by the employee and, with all factors being equal, the length of service of each employee."

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

4. On August 29, 2008, the Employer discharged the Petitioner. The Employer stated it discharged the Petitioner because it was undergoing a reorganization of its company, and the Petitioner was the least senior employee in his department.
5. Between March 16, 2007 and August 29, 2008, the Employer discharged 14 employees, in addition to the Petitioner, because of its corporate reorganization. The national origin of three (3) of those employees was Mexico, one (1) was from India, and one (1) was from the Ukraine. The Employer had no information regarding the national origin of the remaining nine (9) discharged employees.
6. In his charge, the Petitioner alleged the Employer discharged him because his national origin is Poland. The Petitioner contended that two weeks prior to his discharge, the Director of Operations made a reference to employees of Mexican descent which led the Petitioner to believe the Employer favored non-Polish employees. The Petitioner further alleged the Employer did not discharge similarly situated non-Polish employees under similar circumstances.
7. In his Request, the Petitioner argues that the Respondent dismissed his charge after it had improperly made credibility determinations and resolved various disputed facts in favor of the Employer. The Petitioner also argues the Employer did not submit sufficient evidence of its reorganization.
8. In its response, the Respondent contends there is no substantial evidence of discrimination. The Respondent argues there is no substantial evidence that the Employer's articulated reason for discharging the Petitioner was a pretext for unlawful discrimination.

CONCLUSION

The Commission's review of the Respondent's investigation file leads it to conclude that the Respondent properly dismissed the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D).

In the Petitioner's case, there is no substantial evidence the Employer discharged the Petitioner because of his national origin. Rather, the evidence shows that during the reorganization, the Employer discharged approximately fourteen employees, five of whom were not of Polish origin. Based on this evidence, there is no support for the Petitioner's belief that the Employer favored employees of non-Polish descent, or that the Employer's stated reason for discharging the Petitioner was a pretext for national origin discrimination.

In the absence of any evidence that the business consideration relied upon by the Employer was a pretext for unlawful discrimination, the Commission cannot substitute its judgment for the Employer's business judgment. See Berry and State of Illinois, Department of Mental Health and Developmental Disabilities, IHRC, ALS No. S-9146 (December 10, 1997).

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that the Respondent's dismissal of his charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and Prince Industries, Inc., as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

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)
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Entered this 14th day of April 2010.

Commissioner David Chang

Commissioner Marylee Freeman

Commissioner Charles E. Box